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ABSTRACT

Articles of The Bill of Rights, although comprising the fundamental principles of American society, are often opposed by many people on varying grounds. For example, many people support physical abuses by law enforcement officials, even though they might violate constitutional rights. The First Amendment, simple in original wording, has resulted in a vast amount of court cases and legislative action. However, a wide variety of examples demonstrates that the principle of freedom of expression apparently has very little public support. Government often operates with a powerful motivation toward secrecy, such as in the operation of foreign affairs and in the suppression of news about the Gulf War. News organizations also showed during the Gulf War a tendency to avoid expressions of public outrage, and most did not protest government censorship, which the public overwhelmingly supported. In the schools, freedom of expression gives way to thought control. Various groups work to prohibit controversial texts. Students are forced to conform to dress and speech codes, and are often harassed if they try to exercise civil freedoms. Colleges are ruled by attempts to impose restrictions on speech not deemed politically correct, but the anti-politically correct advocates are also guilty of hypocritical intolerance. Colleges also participate in acts of secrecy. The schools and government both exhibit hostility toward freedom of expression, but this is a general tendency throughout society. It may be that, in today's America, dearly holding to the precepts of the First Amendment has become a thing of the past. (HB)

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WE BETTER NOT VOTE ON IT: PUBLIC HOSTILITY TOWARD FREEDOM OF EXPRESSION

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Every so often enterprising high school or college students studying the Constitution undertake a little experiment. They write up the provisions of the Bill of Rights as a petition and circulate through a shopping mall asking people to sign it. The results of this experiment are consistent. The overwhelming majority of those asked to sign refuse. Many charge the students with engaging in some kind of subversive activity--a Communist plot and the like. Only a small minority recognize the petition for what it is, namely our fundamental guarantees as a free people.

Article by article the Bill of Rights is opposed by many who call themselves good Americans, perhaps in some cases by a majority of the people. People demand and our Congress passes laws that allow police broad powers of search and seizure with out the legal "niceties" in the name of the war on drugs. If a suspect confesses, that confession should be used to convict no matter how obtained because the confession proves that the suspect is guilty. In important cases the government ought to be able to present its evidence in secret in the name of national security. Criminals should be kept locked up while awaiting trial to keep them from committing more crimes even though they have never been convicted. The term "accused" is, of course, used only if the people charged with crimes are politicians or police officers. So much then for the Fourth, Fifth, Sixth, and Eighth Articles of the Bill of Rights. And the result is a prescription for a well-ordered police state

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rather than a free society. After all, none of us will ever be the victims of any of these acts. These things only happen to "other people," people who are never part of our social group. The widespread public and legislative support for these provisions demonstrate that many Americans would apparently feel more secure in a police state. Freedom is, after all, a risky business.

If we as a people are so willing to support real physical abuses such as stopping and searching people at random, obtaining a confession by torture, or keeping people in jail who have never been convicted of a crime; the prospects for protecting behavior that is only symbolic are slim. A society that is willing to lock up people without trial is surely willing to suppress unapproved communication. Perhaps it was a recognition of this tendency that led to drafters of the Bill of Rights to state the provision that guarantees freedom of expression in such absolute terms. The clear, simple, forceful language is compelling. The First Amendment says in part:

> Congress shall make no law . . . abridging
> the freedom of speech, or of the press;

The Fourteenth Amendment ratified in 1868 applied this restriction to all levels of government. But over the years Congress and the courts have carved out so many exceptions to this absolute guarantee that a full semester college course is inadequate to analyze the major ones. Even after three decades of study I do not feel that I have a complete understanding of them all. And in addition with each new court case and legislative act these rules change, clear evidence that the problems involved are not simple ones.

However, my subject here is not these exceptions but rather public attitude toward this guarantee of freedom of expression. I will present a series of examples that demonstrate my position that the principle of freedom of expression apparently has very little public support.

I will begin by looking at our government. In a democratic society such as ours it is said that we, the people, are the ultimate decision-makers. We receive information, evaluate it, arrive at conclusions, and then vote accordingly. The cliche is that democracy depends upon an informed electorate. However, our elected leaders recognize that informed constituents can be troublesome. We can ask annoying and embarrassing questions. The result is powerful motivation for secrecy--a tendency that has always existed but one which has accelerated at an alarming rate in the last dozen years. I will use just two examples to illustrate our government's hostility toward freedom of expression. While both examples deal with foreign affairs, let me make it clear that this hostility exists in virtually every executive agency. The Reporters Committee for Freedom of the Press has documented 370 separate censorship acts during only the first 26 months of the Bush administration. Millions of new "secrets" are created by our government every year.

The first example concerns the publication of historical documents of the State Department--a series carrying the title Foreign Relations of the United States and published since 1861. While there has always been a time delay in releasing these annual volumes (in 1950 it was about 15 years), for all intents and purposes publication has stopped because of conflicts between the historians working on the project and the State Department over events 40 years ago. In the 1989 volume dealing with our relations with Iran from 1952 to 1954 the State Department refused to allow publication of the documents that demonstrated that we instigated, planned, and helped in the execution of the overthrow in 1953 of the democratically elected government of Iran in favor of a friendly military dictatorship headed by the Shah. It seems to me that a full understanding of this history is extremely important to a clear

understanding of events in that part of the world today and in particular the deep animosity of the Iranian people toward the United States. How can we arrive at informed judgments about our Middle East policies without such information?

New legislation directed toward this problem has just been signed by President Bush. This law promises to cut the time lag to only 30 years and to do so by 1998, but it has so many loopholes that is doubtful that the problem will really be solved even then.

The second example concerns our military adventures in Granada, Panama, and the Persian Gulf. In all three of these encounters the Pentagon with full presidential support implemented policies that limited press coverage ranging from total exclusion to military censorship of all dispatches. These unprecedented policies had nothing to do with national security and everything to do with keeping the citizens of this country from receiving full and balanced reports about what was going on. Only well afterwards did the most diligent readers discover that President Reagan's representations of the situation in Granada in his nationally televised speech of October 27, 1983, were lies. There were no timely reports of the extent of our actual devastation of Panama, and we still today have no accurate accounting of the apparently substantial number of civilian casualties.

During the Persian Gulf war the Pentagon formulated and implemented rules that gave the military control over both <u>what</u> would be reported and <u>who</u> would report it. Given this control it is not surprising that reports from the war zone did not tell us that an estimated 85% of our bombs were not on target resulting in the death of at least 200,000 Iraqi civilians, probably more than half under the age of 14. Our government did not want the American

people to know the horrors being inflicted by our government in the name of the American people.

A further demonstration of the Pentagon's real interest in all this censorship can be seen in the decision to make the Dover, Delaware, military mortuary off-limits to the news media. Obviously that policy decision had nothing to do with national security and everything to do with concealing the number of military deaths from the American public. And one final demonstration emphatically makes the point. It is the statement of a Pentagon official justifying refusal to release videotape of our helicopter gunships mowing down fleeing Iraqi soldiers: "If we let people see that kind of thing, there would never again be any war."

There are a couple of important extensions in this last example. The first is the response of the news media, those vigorous and virtuous champions of freedom of the press. Several individuals and eleven news organizations filed a suit asking the courts to forbid enforcement of the Pentagon's censorship code. Who were the eleven organizations? They were The Guardian, Harper's, In These Times, L. A. Weekly, Mother Jones, The Nation, Pacific News Service, Pacifica Radio News, The Progressive, The Texas Observer, and the village voice. But from the Associated Press, the television news organizations, The New York Times, The Washington Post, and even Gannett and National Public Radio--not a peep, although a few mild complaints were heard several months after the Gulf War was over. These lions of the news industry--cowardly lions all--were apparently afraid to rise up to defend the First Amendment against this wholesale attack by our government.

I cannot leave this first extension without also noting a couple of local cases. First, there is the remarkable protest against the Gulf War staged by students from four area colleges and eight high schools at Wilson Commons of the University of Rochester on the weekend of April 27-28. For these two days the students placed score counting chalk lines on the brick wall of Wilson Common trying to make 100,000 marks to count some of the Iraquis killed by our military actions. I do not recall hearing or reading about this remarkable event in any of the local news media. Second there is the dramatic difference between Gannett's response to the Gulf War censorship and their demand in the name of freedom of the press that an indicted police officer reveal the contents of his check book. On the vital issue of government censorship they say nothing; on the trivial matter of the check book they demand their First Amendment rights. Of course, it is Gannett's Chairman, John Curley, who is reported to have given the Pentagon "at least an A-minus" for its handling of the media. From the Pentagon's viewpoint, that may be an appropriate grade, but it is shocking that the head of a major news organization would offer such an approving grade to government censorship.

The second extension of the example may help explain this media cowardice. When these major news organizations vigorously protested the censorship surrounding our invasion of Panama, the public responded by attacking the media. We, the public, apparently accepted Stephen Decatur's famous aphorism, "[O]ur country, right or wrong." The public opinion surveys all showed a strong pro-censorship viewpoint combined with a strong anti-media viewpoint. Our minds were made up. We did not want to hear the truth. And we condemned anyone who demanded the right to tell us the truth. Such

public attitude was, if anything, more widespread during the Gulf War. Just listen to these statements made by people calling in to radio talk shows:

> A response to news analysis of war strategies--"The press ought to get out of it and let the military run it."
>
> For a Pentagon briefing reporters question--"We don't need reporters pushing the military."
>
> And for the act of broadcasting the briefing--"They're letting Saddam Hussein know what we are saying!"

To quantify this attitude there was the poll conducted by the Times Mirror Center for People and the Press that discovered that almost 80% of the public approved of the Pentagon censorship, and almost 60% thought that there should be even more censorship. No wonder that the major news organizations were afraid to make even a whimper of protest. This public attitude provides compelling evidence of both the effectiveness and the effect of this censorship by our government. For most the war was some kind of video game in which the proper response was to cheer for the home team. Such attitudes are a far cry from a well-informed public mind capable of debating the fundamental issues of war and peace. This is in effect a free people clamoring for chains. A free society demands more rather than less information.

In sum what happened was a broad government attack on the First Amendment, news media that were afraid to challenge that censorship, and a general public that cheered this undermining of one of our most precious freedoms.

Let me now turn my attention to a second major institution in our society, our schools. I would imagine that most people think of our schools as a place where full and free interchange of ideas is both supported and

practiced. Sad to say that the reality is nothing like this vision. At the elementary and secondary school level authoritarian thought control is the rule rather than the exception. Six times a year the Office of Intellectual Freedom of the American Library Association publishes its Newsletter on Intellectual Freedom. The regular reading of this journal is a depressing experience. Each issue uses most of its some 50 pages to review incidents of censorship or attempted censorship, and a large number of these cases involve our schools. For 1990 the ALA reported some 265 censorship attempts in public schools and 500 additional attacks on library materials. Organized pressure groups and individual parents demand not just the right to shield their children from information and ideas of which they do not approve. They also demand the right to censor what everyone else's children will read and learn. Literature that does not suit them, subjects that they feel are inappropriate, and even scientific facts that do not fit their world view are to be banned completely. The list of works that have been challenged reads like a review of the best in contemporary American fiction. Even "Little Red Ridinghood" is to be banned because Grandma enjoys a glass of wine. Another 1990 survey, this one in California, found that 150 out of the 421 public school districts in the state--36% of the school districts--had experienced some challenge to educational materials in use in the district. While some satisfaction can be gained from the fact that in many cases these efforts are resisted by the schools, it must also be reported that these efforts at censorship too often receive the sympathetic support of school administrators and local school boards.

In 1943 during the heights of World War 11 the Supreme Court of the United States considered whether public schools could compel students to salute the flag. In writing the Court's opinion in this case a very wise

Justice, Robert Jackson, observed that while schools needed freedom to perform their difficult functions, they nevertheless must perform those functions within the limits of the Bill of Rights. He said, "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

Twenty-six years later, in 1969, Justice Abe Fortas forcefully restated this idea: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years." But in spite of these clear and unequivocal statements by the Supreme Court our public schools do not show scrupulous concern for freedom of expression and in the process do teach students that the First Amendment is indeed a mere platitude. Dress codes and hair style regulations seek to control and censor these important forms of personal expression. Students who seek to distribute underground newspapers, Christian publications, or anything else not approved by school administrators are harassed and disciplined. And, of course, school newspapers are carefully monitored to make sure that only "approved" stories appear.

One indication of where we are in this Bill of Rights bicentennial year can be seen by the support given to school censorship by a majority of the present Supreme Court, overturning what Justice Fortas had described as the long-standing and unmistakable position of the Court. Writing for this new majority in a 1988 case Justice Byron White said, "Educators are entitled to exercise . . . control over . . . student expression to assure that participants learn whatever lessons the activity is designed to teach, that

readers or listeners are not exposed to material that may be inappropriate..." Such words are a clear invitation to authoritarian thought control, an invitation that school administrators have eagerly accepted. So much for the "nonsense" that students in public schools have constitutional rights.

On the other side of the equation what are the attitudes of school students toward censorship? According to the survey of 72,000 teenagers published in the August 23-25, 1991, issue of U. S. A. Weekend, there is significant student support for surrendering constitutional rights. About half the students surveyed approve of random locker searches--a clear violation of the Fourth Amendment. In regard to First Amendment rights, about 40% approve of prior restraint, the requirement that all publications, posters, and the like should be reviewed and receive approval from the school administration before the communication takes place. These figures suggest that the schools have indeed, succeeded in doing what Justice Jackson warned of--they have taught far too many students that the Bill of Rights is "mere platitudes."

Turning to the college campus, we find that the picture is no brighter. Here also the desire to censor other people's communication is widespread. The hot issue on campus these days is what is called hate speech--racist, sexist, homophobic communication designed to hurt those subject to these verbal attacks and in the process create a hostile learning environment for minorities, women, gays and lesbians, and any other despised identifiable group. Colleges, including mine, address the problem by enacting codes punishing such speech. Aside from the fact that in every court test of these codes they have been found to violate the First Amendment, their real shortcoming is that they do not address the problem of the attitudes that

produce this communication. As a society we have really failed to address these hateful attitudes, and speech codes help us to continue to avoid the problem because we can feel good that we are "doing something about it." And that something is to punish communication. The intolerance toward communication on college campuses is shocking, and too often this intolerance is combined with a large dose of hypocrisy. On my campus the same groups that have brought us the racist nonsense of Al Sharpton and Leonard Jefferies prevented the scheduled appearance of an African-American actress because they did not approve of the title that she had given to her one woman show. In the City University of New York those who loudly condemn Jefferies's racism are silent about the racism of philosophy professor Michael Levin, and visa-versa. At the University of California Berkeley a group of professors organized a boycott of--of all things--bookstores because those stores sponsored a speech by Noam Chomsky calling attention to something they did not want heard--Israel's policy of genocide toward the Palestinian people. These same professors would, of course, protest loudly if <u>their</u> communication were subject to a similar attack. Whatever we teach on college campuses, we have apparently failed to teach civility, tolerance, and intellectual honesty.

Another recent phenomenon that illustrates this failure is the so-called "politically correct" speech movement--knows by the shorthand PC. The claim that has received attention in national news magazines is that there is widespread hostility on college campuses directed toward those who do not express the appropriate thoughts on matters of race, gender, sexual orientation, physical handicaps, and the like. The problem is that in spite of all the attention manufactured in large part by the political far right, these claims of intolerance prove on analysis to be 97% untrue which is in no

way an excuse or justification for the 3% of real intolerance. Few notice that it is usually those who have power and secure positions who are claiming that they are victimized by the powerless, by women and minorities. Most all of the charges of PC are in the final analysis just so much PH--political hypocrisy.

This hypocrisy becomes evident when the motives of those in the anti-PC campaign are examined. These are the same people who resist proposals for curriculum reform designed to address racist and sexist attitudes in our society--to take real action to deal with hate speech. Proposals to include information in the curriculum to balance present biases are also condemned. In a world that certainly is changing, in which our body of knowledge is continually expanding, there is a natural resistance to change. But that resistance is too often an intolerant rejection of new and more complete information particularly when this new data challenges long held assumptions. Those who assert that there is much of value beyond the work of dead, white, Western European men, are attacked as being unscholarly and seeking to undermine intellectual standards. The obvious goal of these attacks by those with position and power in the academy is to inhibit or prevent entirely expansion of the curriculum to include the works of women and non-western European writers. If the new concepts and data cannot be totally excluded, the attacks seek to trivialize this information in the hope that it will be disregarded or rejected by those exposed to it.

A good example of this last tendency is the way the academic power elites address the challenges to existing dogma by the Afrocentricism movement. Great effort is made to show that the Afrocentrist is unscholarly and deals with inadequate evidence and unsupported claims. I cannot help notice that those who challenge Afrocentricism have nothing to say about the unsupported

and unscholarly claim still made by too many historians and textbooks that Columbus discovered America. Here again freedom of expression and inquiry fall victim to intolerance and intellectual dishonesty.

Like government colleges and universities often find it in their self-interest to engage in secrecy rather than face the consequences of having to defend policies and actions in open debates. For example, the University Senate of the State University of New York last year adopted without a single dissenting vote a request that the State allow it to exclude the public from meetings dealing with animal research. The obvious purpose of this request is to inhibit criticism of such research by animal rights groups. If, as the University claims, animal research is being carried out in a responsible manner (and I believe that it is), why is the University afraid to defend the content and methods of this research in public? Perhaps because such defense is inconvenient and burdensome. But then, any public discussion where there is more than one point of view can be inconvenient and burdensome.

A second example of self-interested secrecy can be found in the dispute in colleges and universities across the nation about criminal records. In many places local law enforcement officers, whether city police or campus safety officers, refuse to make complete arrest records available to news reporters, usually representing the campus newspaper. The grounds cited for this refusal are usually federal privacy laws that protect educational records. However, even a moment's thought about the matter makes it clear that the record of arrest for a criminal act cannot by any stretch of the imagination be transformed into an educational record. Where this issue has been tested in the courts, the courts agree that the federal law claimed to protect these records does not apply, and a survey by the Student Press Law

Center discovered that not a single school had ever lost any federal funding for the disclosure of arrest records.

Here again we need to ask about the real motives for keeping these records secret. Let me suggest that the issue is not privacy but public image. Colleges and universities want to project the image of safe havens so that parents can feel secure about sending their sons and daughters to them - away, often for the first time, from the security of home. That false image would be damaged if reports of burglary, assault, and rape were made public. Higher education has been vigorously resisting proposed federal legislation that would require the publication of criminal records just as there is resistance to publication of the graduation rates for student athletes that might reveal that even this term is false, that too many athletes in big time programs are not students at all.

One final local example of the problem of campus secrecy is the current dispute over the relationship established in secret between the Rochester Institute of Technology and the Central Intelligence Agency. The report published last week details this secrecy and the lying used to maintain it. This academic community was being used by the CIA without its knowledge or consent. Such secrecy should seem antithetical to the very concept of an institution of higher education, and the often acrimonious debate about the RIT-CIA connection shows the subversive impact that this relationship has had on the RIT community.

In sum, although we should expect them to do better, our schools and colleges demonstrate the same hostility to freedom of expression found in our government. At all levels officially unapproved communication is suppressed and punished. In communities in which free inquiry and tolerance should be

expected, we find hypocrisy and intolerance. We even find the resort to secrecy which by definition is antithetical to free inquiry.

Our government, our news media, our schools and colleges all reflect the basic attitudes and values of the general society. The current censored films series at the Dryden Theatre illustrates the range of communication that segments of society find objectionable. Two films have been subject to censorship because they address the embedded racism of our society. Various religious groups have called for censorship of two of the films because they challenge previously unquestioned dogma. Two films illustrate systematic efforts to eliminate from films any idea that the far right might brand as "unAmerican." The last film is one that, when considered by a total of 16 federal judges was judged obscene by 8 of them and not obscene by the other 8--a classic illustration of just how slippery and subjective are the standards used by those who mount campaigns to get rid of "pornography"-- a term that defies clear definition. Even former Attorney General Edwin Meese's infamous commission on pornography was unable to agree on a definition of what they were supposed to be studying. The final irony of this film series is that Monroe Community College and the Dryden Theatre have been viciously attacked for daring to present this series of films demonstrating the evil of censorship.

Responses to this Dryden Theatre series provides a fairly typical example of what I see as the public's attitude toward freedom of expression. While we may defend our own right of freedom of expression, we are too often eager to attack that right when exercised by others whose messages we do not like. The Roman Catholic Church which for 200 years has benefited from the protection of the First Amendment seeks to censor communication and communicators whose messages runs counter to the dogma of the Church, whether

they be films or theologians. Religious fundamentalists who demand their freedom to communicate through television for evangelism often lead the attacks on school materials that run contrary to their world view. Jews who consider the statements of African Americans anti-semitic demand that those people be punished while the African Americans make the same demand regarding Jews who teach what they regard as racist concepts. And, of course, there is the charge of anti-semitism used to try to silence those who dare criticize the policies of the state of Israel. The professional patriot condemns and seeks to silence those who might be critical of the actions of our government or the failures of our economic system. While such criticism is often in the finest tradition of our nation, these critics are branded as un-American. The American Civil Liberties Union that prides itself on defending the civil liberties of all Americans lost a significant portion of its membership a few years back when it maintained that the right of freedom of expression even included a little band of neo-Nazis. Perhaps the problem here is that all of these groups, all of us, have discovered the truth with a capital T and are unwilling to have anyone question that truth. And as Charles Arthur Willard observed in his wonderful book on argumentation, "People who know the truth usually behave badly." Perhaps Willard was thinking of people like our President, George Bush, who today vetoed the entire appropriations bill for Health and Human Services because the legislation would prevent him from maintaining the censorship that he has imposed on doctor-patient communication. And over 1/3 of the members of the House of Representatives--113 Republicans and 43 Democrats just voted to sustain that censorship. If even our President and 156 members of Congress does not believe in the First Amendment, should we be surprised that the public that elected them also does not.

In a speech at a recent annual conference of the American Library Association, Senator Patrick Leahy of Vermont--someone now familiar to most of us as a result of the Thomas-Hill controversy--observed, "Every American holds dear the freedom guaranteed by the First Amendment." What I am afraid I have demonstrated here is that in this bicentennial year of the Bill of Rights Senator Leahy's statement is at best wishful thinking. Public support for censorship of communication we do not like is widespread. We no longer support the statement attributed to Voltaire, "I disapprove of what you say, but I will defend to the death your right to say it." Our government and our schools and those who lead them demonstrate by their words and deeds that they do not "hold dear" freedom of speech. Even our news media are at best reluctant and timid defenders of freedom of the press--and then usually only when their economic interests are at jeopardy. So I conclude that we better not put the First Amendment to a vote, because if we do, it will lose.